

ASSEMBLY BILL

No. 1775

Introduced by Assembly Member Melendez

February 18, 2014

An act to amend Section 11165.1 of the Penal Code, relating to child abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 1775, as introduced, Melendez. Child Abuse and Neglect Reporting Act: sexual abuse.

Existing law, the Child Abuse and Neglect Reporting Act, defines sexual abuse as sexual assault or sexual exploitation for purposes of mandating certain persons to report suspected cases of child abuse or neglect. Under the act, sexual exploitation refers to, among other things, a person who depicts a child in, or who knowingly develops, duplicates, prints, or exchanges, a film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct, except as specified. Failure to report known or suspected instances of child abuse, including sexual abuse, under the act is a misdemeanor.

This bill would provide that sexual exploitation also includes a person who knowingly downloads a film, photograph, video tape, negative, or slide in which a child is engaged in an act of obscene sexual conduct. Because the bill would expand the scope of a crime and impose additional duties on local officials, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11165.1 of the Penal Code is amended
2 to read:
3 11165.1. As used in this article, “sexual abuse” means sexual
4 assault or sexual exploitation as defined by the following:
5 (a) “Sexual assault” means conduct in violation of one or more
6 of the following sections: Section 261 (rape), subdivision (d) of
7 Section 261.5 (statutory rape), 264.1 (rape in concert), 285 (incest),
8 286 (sodomy), subdivision (a) or (b), or paragraph (1) of
9 subdivision (c) of Section 288 (lewd or lascivious acts upon a
10 child), 288a (oral copulation), 289 (sexual penetration), or 647.6
11 (child molestation).
12 (b) Conduct described as “sexual assault” includes, but is not
13 limited to, all of the following:
14 (1) ~~Any penetration,~~ *Penetration*, however slight, of the vagina
15 or anal opening of one person by the penis of another person,
16 whether or not there is the emission of semen.
17 (2) ~~Any sexual~~ *Sexual* contact between the genitals or anal
18 opening of one person and the mouth or tongue of another person.
19 (3) ~~Any intrusion~~ *Intrusion* by one person into the genitals or
20 anal opening of another person, including the use of ~~any an~~ *an* object
21 for this purpose, except that, it does not include acts performed
22 for a valid medical purpose.
23 (4) The intentional touching of the genitals or intimate parts
24 ~~(including, including~~ *including* the breasts, genital area, groin, inner thighs,
25 ~~and buttocks)~~ *buttocks*, or the clothing covering them, of a child,
26 or of the perpetrator by a child, for purposes of sexual arousal or
27 gratification, ~~except that,~~ *that* it does not include acts which may
28 reasonably be construed to be normal caretaker responsibilities;

1 interactions with, or demonstrations of affection for, the child; or
2 acts performed for a valid medical purpose.

3 (5) The intentional masturbation of the perpetrator’s genitals in
4 the presence of a child.

5 (c) “Sexual exploitation” refers to any of the following:

6 (1) Conduct involving matter depicting a minor engaged in
7 obscene acts in violation of Section 311.2 (preparing, selling, or
8 distributing obscene matter) or subdivision (a) of Section 311.4
9 (employment of minor to perform obscene acts).

10 (2) ~~Any~~ A person who knowingly promotes, aids, or assists,
11 employs, uses, persuades, induces, or coerces a child, or ~~any a~~
12 person responsible for a child’s welfare, who knowingly permits
13 or encourages a child to engage in, or assist others to engage in,
14 prostitution or a live performance involving obscene sexual
15 conduct, or to either pose or model alone or with others for
16 purposes of preparing a film, photograph, negative, slide, drawing,
17 painting, or other pictorial depiction, involving obscene sexual
18 conduct. For the purpose of this section, “person responsible for
19 a child’s welfare” means a parent, guardian, foster parent, or a
20 licensed administrator or employee of a public or private residential
21 home, residential school, or other residential institution.

22 (3) ~~Any~~ A person who depicts a child in, or who knowingly
23 develops, duplicates, prints, *downloads*, or exchanges, ~~any a~~ film,
24 photograph, video tape, negative, or slide in which a child is
25 engaged in an act of obscene sexual conduct, except for those
26 activities by law enforcement and prosecution agencies and other
27 persons described in subdivisions (c) and (e) of Section 311.3.

28 SEC. 2. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution for certain
30 costs that may be incurred by a local agency or school district
31 because, in that regard, this act creates a new crime or infraction,
32 eliminates a crime or infraction, or changes the penalty for a crime
33 or infraction, within the meaning of Section 17556 of the
34 Government Code, or changes the definition of a crime within the
35 meaning of Section 6 of Article XIII B of the California
36 Constitution.

37 However, if the Commission on State Mandates determines that
38 this act contains other costs mandated by the state, reimbursement
39 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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